



Fuel Security (Fuel Security Services Payment) Rule 2021

I, Angus Taylor, Minister for Energy and Emissions Reduction, make the following instrument.

Dated: 21 July 2021

Angus Taylor
Minister for Energy and Emissions Reduction

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Part 1—Preliminary

1 Name

This instrument is the *Fuel Security (Fuel Security Services Payment) Rule 2021*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 84(1) of the *Fuel Security Act 2021*.

4 Definitions

In this instrument:

Act means the *Fuel Security Act 2021*.

average is the mean of values.

bank means a body corporate that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

blendstock means a finished product imported to the refinery that is added to, or mixed with, a refined finished product produced at the refinery before it is sold.

Note: It does not include a feedstock transformed at the refinery into FSSP fuels and other products.

close, in relation to a refinery, means when the refinery ceases to refine all FSSP fuels under paragraph 50(1)(a) of the Act.

cpl means cents per litre.

EBITDA means earnings before interest, taxes, depreciation, and amortization.

EBIT means earnings before interest and taxes.

feedstock means crude oil, condensate, vegetable or animal oils and fats and other hydrocarbon inputs that are transformed at a refinery into petroleum products.

force majeure event—see subsection 20(3).

guidelines means the *Fuel Security (Fuel Security Services Payment) Guidelines 2021* as in force from time to time.

FQS Act means the *Fuel Quality Standards Act 2000*.

investment grade credit rating means a credit rating from a recognised ratings agency, such as Standard and Poor's, that is regarded in financial markets as of investment grade, typically a BBB- or higher grade.

material adverse change—see subsection 20(5).

milestone report means the milestone report under the guidelines and any subsequent reports of a similar nature.

POFR Act means the *Petroleum and Other Fuels Reporting Act 2017*.

POFR rules means the *Petroleum and Other Fuels Reporting Rules 2017*.

refinery operator means the person eligible for fuel security services payments for a refinery and any other entity with operational control of the refinery.

relevant independent analysis—see subsection 20(10).

related refinery entity means:

- (a) the Australian controlling corporation for a refinery operator; and
- (b) any other entity which owns the refinery; and
- (c) any related body corporate of the refinery operator which is able to control or exert significant influence over the operation of the refinery.

RON means research octane number.

TRPPP means the Temporary Refinery Production Payment Program established by the *Industry Research and Development (Temporary Refinery Production Payment Program) Instrument 2021*.

5 FSSP fuel

- (1) This section prescribes requirements to be met for FSSP fuels for the definition of “FSSP fuel” in the Act.
- (2) Gasoline and diesel must be able to be supplied and used for road transport consistent with the FQS Act.
- (3) Gasoline must be one of the following as reported under the POFR rules:
 - (a) regular unleaded—less than RON 95;
 - (b) premium unleaded—RON 95 to less than RON 98;
 - (c) premium unleaded—RON 98 or higher.
- (4) Diesel must be one of the following as reported under the POFR rules:
 - (a) regular diesel;
 - (b) premium diesel.
- (5) Kerosene must be:
 - (a) jet fuel as reported under the POFR rules; and
 - (b) saleable for air transport purposes in Australia.

Part 2—Applications for fuel security services payment

6 Applications for fuel security services payment

- (1) For paragraph 39(3)(b) of the Act, applications must meet the requirements, and include the information, required by this section.

Note: Under subsection 39(2) of the Act the application must also include the person’s consent to the imposition of repayment obligations under section 50. Paragraph 39(3)(a) of the Act requires applications to be in a form (if any) approved by the Secretary under section 81 of the Act.

- (2) An application must:
 - (a) set out the applicant’s contact details and Australian Company Number; and
 - (b) provide evidence that the applicant and refinery meet the requirements relevant to the Minister’s decision under subsection 40(2) of the Act; and
 - (c) include:

- (i) if the refinery is not eligible under the TRPPP—historic information to support the refining of FSSP fuels meeting the requirements of section 5; or
 - (ii) if the refinery is new—a detailed explanation of how it will refine FSSP fuels meeting the requirements of section 5 and relevant regulatory approvals for the refinery; and
 - (d) outline the applicant’s operational and other risk mitigation policies and procedures, such as its insurance arrangements, that seek to mitigate the likelihood of the circumstances in section 20 arising; and
 - (e) include a security relating to the fulfilment of any requirements to repay fuel security services payment covered by subsection (3); and
 - (f) state the intended end date for the commitment period as the end of a quarter:
 - (i) no earlier than the quarter ending 30 June 2027; and
 - (ii) no later than the quarter ending 30 June 2030; and
 - (g) if any parameter for the calculation of fuel security services payments must be determined—include that parameter and the basis of its calculation; and
 - (h) include the applicant’s intention to cooperate with the Department in relation to the milestone report for fuel security services payments, including through access to appropriate financial information relating to the refinery’s margin and the preparation of the milestone report; and
 - (i) specify the applicant’s bank account and any other relevant details for receiving fuel security services payments.
- (3) For paragraph (2)(e), one of the following forms of security must be included:
- (a) a deed by the Australian controlling corporation for the applicant that:
 - (i) is enforceable by the Commonwealth of Australia; and
 - (ii) guarantees that the Australian controlling corporation will pay any debt due under section 50 of the Act by the applicant that has not been paid at the time it becomes due and payable; and
 - (iii) requires the provision of a replacement guarantee in the event that the Australian controlling corporation is, or is reasonably likely to be, unable to meet the obligations guaranteed under subparagraph (ii); or
 - (b) a bank guarantee issued by a bank covering the payment of any debt due under section 50 of the Act by the applicant that has not been paid at the time it becomes due and payable.

Part 3—Eligibility decision

7 Requirements for refining of FSSP Fuel

- (1) For paragraph 40(2)(c) of the Act, refining of FSSP fuel must meet the requirements of this section.
- (2) The refining must involve the transformation of crude oil, with other feedstocks, into gasoline, diesel and kerosene meeting the requirements to be an FSSP fuel.

Note: The crude oil and feedstocks may come from domestic or international sources. The requirements to be an FSSP fuel are set out in section 5.
- (3) At the time of the application under section 39 of the Act, FSSP fuels must constitute a majority of the annual output of the refinery.

8 General requirements to approve applications

- (1) For paragraph 40(2)(d) of the Act, applications must meet the requirements required by this section to be approved.

Note: Under subsection 40(2) of the Act the applicant must also be a constitutional corporation, refine FSSP fuel at a refinery in Australia and refine fuel consistent with the requirements in section 7.

- (2) The Minister must not grant the application unless satisfied that:
 - (a) the applicant has the capability to refine FSSP fuel at the refinery and has the intention to do so for the duration of the commitment period; and
 - (b) the security provided for under subsection 6(3) is sufficient to mitigate the risks of non-repayment, having regard to the creditworthiness of the person providing the security and other relevant matters; and
 - (c) the applicant intends to cooperate with the Department in relation to the preparation of the milestone report for fuel security services payments, including through access to appropriate financial information relating to the refinery's margin and the preparation of the milestone report; and
 - (d) the approval of the application would not result in two persons being eligible for fuel security services payments for the same refinery and quarter; and
 - (e) the applicant was not previously approved under section 40 of the Act for the same refinery.
- (3) For paragraph (2)(b) and without limiting other relevant matters, an investment grade credit rating of the person providing the security is prima facie evidence of the sufficiency of the creditworthiness of the person providing the security.

Part 4—Commitment periods

9 Initial commitment period

For paragraph 41(1)(a) of the Act, a commitment period specified in a notice to a person under subsection 40(3) of the Act must end at the end of a quarter requested by the applicant in their application that is:

- (a) no earlier than the quarter ending 30 June 2027; and
- (b) no later than the quarter ending 30 June 2030.

10 Variation or termination of commitment period

- (1) For subsection 41(3) of the Act, the requirements in this section are prescribed.
- (2) A commitment period must not be varied or terminated other than as prescribed under subsection (3) or (4).
- (3) If an application under subsection 41(2) of the Act is made to request a variation to extend a commitment period to 30 June 2030, the Minister must approve the application and extend the period to 30 June 2030 unless satisfied that the requirements of subsection 40(2) of the Act (other than paragraph 8(2)(e) of this instrument) are no longer met.
- (4) If an application under subsection 41(2) of the Act is made to request a variation to terminate or shorten a commitment period to a date specified in the application, the Minister must approve the application and make the termination or variation if:
 - (a) the Minister is satisfied:
 - (i) information required to be reported by section 17 has been provided to the Minister; and

- (ii) the circumstances for when repayment would not be required in section 20 would be met if the refinery closed on the last day of the varied or terminated commitment period; or
 - (b) all payments made under Part 3 of the Act in relation to the committed refinery that would be repayable under section 21 have been repaid to the Commonwealth (assuming the repayment day was the start of the 120 day period for that section and the period was not varied under this section) and no further fuel security services payments would be made to the applicant after the variation or termination; or
 - (c) the Minister is satisfied that the Act, this instrument or guidelines made under subsection 43(4) of the Act have been amended to materially reduce the payments under Part 3 of the Act in respect of the committed refinery in the 180 days before an application under subsection 41(2) of the Act to terminate or vary the period.
- (5) The end date of a commitment period varied or terminated in accordance with subsection 10(3) may be before the date of the application under subsection 41(2) of the Act if requested in that application.

Part 5—Payment of fuel security services payment

11 Circumstances when fuel security services payment is not payable

- (1) For paragraph 42(2)(c) of the Act, fuel security services payment is not payable to a person for a quarter in accordance with subsection (2) or (3).
- (2) Fuel security services payment is not payable if:
 - (a) refining of fuel by the committed refinery during the quarter no longer meets the requirements of subsection 7(2); and
 - (b) any breach of the requirements of subsection 7(2) does not relate to a temporary cessation of the production of one or more FSSP fuels.
- (3) Fuel security services payment is not payable if:
 - (a) if the person providing the security for subsection 6(3) previously had an investment grade credit rating—the rating is no longer an investment grade credit rating; and
 - (b) the person providing the security for subsection 6(3) is reasonably likely to be unable to meet the repayment obligations guaranteed by the security; and
 - (c) an appropriate replacement security has not been provided to the Secretary.
- (4) However, if subsection (3) applied to a quarter and an appropriate replacement security is subsequently provided to the Secretary, fuel security services payments are then payable for the quarters to which subsection (3) applied.
- (5) For paragraph (3)(c) and subsection (4), an *appropriate replacement security* includes:
 - (a) a bank guarantee covered by paragraph 6(3)(b); or
 - (b) a guarantee provided in accordance with subparagraph 6(3)(a)(iii).
- (6) A decision that fuel security services payment is not payable to a person for a quarter because of this section or subsection 42(2) of the Act is taken to be a reviewable decision under Division 2 of Part 5 of the Act, with the Secretary being the responsible person for that decision.

12 Rate of fuel security services payment

- (1) For subsection 43(1) of the Act, the number of cents per litre for each FSSP fuel is:

- (a) if the rate (**R**) worked out under subsection (2) is equal to or greater than 1.8—1.8 cpl; and
 - (b) if the rate (**R**) worked out under subsection (2) is between 0 and 1.8 cpl—that amount; and
 - (c) if the rate (**R**) worked out under subsection (2) is equal to or less than 0—0 cpl.
- (2) For subsection (1), the rate is given by the following formula:

$$R = 6.4 \text{ cpl} - \frac{\sum_t MM_t}{3}$$

where:

R is the rate of the fuel security services payment in cpl for a quarter, rounded to two decimal places.

MM_t is the margin marker for each month (**t**) in the quarter, determined under subsection (3).

- (3) For subsection (2), **MM** for a month is given by the following formula:

$$MM = FP - CP + BD + SRF - SC$$

where:

FP is the assumed price of FSSP fuels and fuel oil applicable to the refinery for the month, based on an average price weighted by yield of each fuel, in cpl, determined under subsection (4).

CP is the average price of crude oil for the month, in cpl, converted to litres and Australian dollars, from the monthly “Kimanis (Asia close)” price published by S&P Global Platts (Platts code: AASCL00) in United States dollars per barrel.

BD is the basis differential, in cpl, representing the historical differences between the margin marker in the guidelines and the margins of the refinery either:

- (a) specified in the guidelines for the refinery (and converted from dollars per barrel to cpl); or
- (b) if not specified in the guidelines—determined by the Minister in approving an application under section 40 of the Act, taking into account the operating environment for each refinery.

SRF is the cost of shipping refined fuel from Singapore for the product mix of the refinery for the month, in cpl, determined under subsection (5).

SC is the cost of shipping crude oil from Indonesia for the month, in cpl, determined under subsection (6).

- (4) For subsection (3), **FP** is given by the following formula:

$$FP = \sum_f P_f \times Y_f$$

where:

f is the fuel types being:

- (a) gasoline;
- (b) diesel;
- (c) kerosene;

- (d) fuel oil;
- (e) marine fuel oil.

P_f is the price of the fuel type f for the month, in cpl, converted to Australian dollars and litres, from the monthly average price of the following:

- (a) for gasoline—“Gasoline Unl 95 FOB Spore Cargo” published by S&P Global Platts (Platts code: PGAEZ00) in United States dollars per barrel;
- (b) for diesel—“Gasoil 0.001% S (10 ppm) FOB Spore Cargo” published by S&P Global Platts (Platts code: AAOVC00) in United States dollars per barrel;
- (c) for kerosene—“Jet Kero FOB Spore Cargo” published by S&P Global Platts (Platts code: PJABF00) in United States dollars per barrel;
- (d) for fuel oil—“FO 380 CST 3.5% S FOB Spore Cargo” published by S&P Global Platts (Platts code: PPXDK00) in United States dollars per tonne;
- (e) for marine fuel oil—“FOB Spore Marine Fuel 0.5% Cargo” published by S&P Global Platts (Platts code: AMFSA00) in United States dollars per tonne.

Note: The values in paragraphs (d) and (e) must first be converted from tonnes to barrels under paragraph (7)(c) before being converted to litres under paragraph (7)(b).

Y_f is the yield of fuel type f for the refinery, expressed as a percentage of the volume of fuel type f from an equivalent volume of crude oil, either:

- (a) specified in the guidelines for the refinery; or
- (b) if not specified in the guidelines—determined by the Minister in approving an application under section 40 of the Act.

- (5) For subsection (3), SRF is the amount given by the following formula (in United States dollars per barrel), converted to Australian dollars and litres and expressed in cpl:

$$SRF = \frac{CF}{\sum_f SV_f \times Y_f}$$

where:

CF is the Singapore – Australia freight cost for refined fuels for the month from the monthly average “Clean Singapore-Australia 30kt MR \$/mt” price published by S&P Global Platts (Platts code: AAJPV00) in United States dollars per tonne of refined fuel.

f is the fuel types under subsection (4).

SV is a specific volume conversion for the fuel, in barrels per tonne, being the following:

- (a) for gasoline—8.5;
- (b) for diesel—7.45;
- (c) for kerosene—7.9;
- (d) for fuel oil—6.35;
- (e) for marine fuel oil—6.35.

Y is the refinery’s yield of each fuel type f under subsection (4).

- (6) For subsection (3), SC is given by the following formula (in United States dollars per barrel), converted to Australian dollars and litres and expressed in cpl:

$$SC = \frac{DF}{SV}$$

DF is the Indonesia – Australia freight cost for crude oil for the month from the monthly average “Dirty Indonesia-Australia 80kt \$/mt” price published by S&P Global Platts (Platts code: TDABC00) in United States dollars per tonne of crude oil.

SV is a specific volume conversion for the crude oil, in barrels per tonne, being 7.67.

- (7) For this section:
- (a) an amount in United States dollars is converted to Australian dollars by multiplying the amount by the monthly average exchange rates published by the Reserve Bank of Australia for the month; and
 - (b) a barrel is converted to litres by multiplying the number of barrels by 158.987295; and
 - (c) a tonne is converted to barrels by multiplying the number of tonnes by the specific volume for the fuel in subsection (5); and
 - (d) if a monthly average is not published for a value, an average of daily published values in a month is calculated as the mean of the values for each day where any day without a published value is excluded from the calculation; and
 - (e) if S&P Global Platts modifies or ceases to publish a classification or code for a value, the most equivalent or similar published value must be used to determine that value.
- (8) If the circumstance in paragraph (7)(e) arises, the Secretary must consult with each person eligible for fuel security services payments about the most equivalent or similar published value before first using that value to calculate fuel security services payments.

13 Determining quantity of FSSP fuel

For subsection 43(3) of the Act, the number of litres of FSSP fuel refined by a person in a quarter must:

- (a) be measured consistently with requirements for the sale of those fuels in Australia and reporting of information relating to those fuels under the POFR rules; and
- (b) not include the volume of any blendstocks; and
- (c) not include any volume of fuel from the refinery which does not meet the requirements to be an FSSP fuel.

14 Process for fuel security services payments

- (1) For section 45 of the Act, the fuel security services payment is payable for a quarter after the Secretary is satisfied with the volume of FSSP fuel refined at a committed refinery in the quarter meeting the requirements under sections 5 and 13 and reported under the POFR Act for the refinery.
- (2) The payments are to be made:
- (a) to the bank account nominated in the application; or
 - (b) if an authorised representative of the person provides updated bank account details—to that account.
- (3) The Secretary must make payments under subsection (1) as soon as practicable, and no later than 30 days, after receiving the relevant information and becoming satisfied under that subsection.

15 Publication of information

For paragraph 46(b) of the Act, the Secretary must publish on the Department's website the total amount of fuel security services payments for the preceding quarter within 14 days after those amounts are paid.

Part 6—Reporting and notification obligations

16 Reporting refinery operation—general

- (1) For paragraph 47(2)(a) of the Act, a person must report:
 - (a) if the operation of the committed refinery does not meet the requirements of subsection 7(2) in the previous quarter—the reasons why these requirements were not met; or
 - (b) if there was no time in the quarter at which the person refined any FSSP fuel at the committed refinery—the reasons why this was the case; or
 - (c) if subsection 11(3) applies to a quarter—why the subsection applies and whether a replacement security is likely to be provided.
- (2) For paragraph 47(2)(c) of the Act, any reports required under subsection (1) must be provided within 21 days of the end of the quarter.
- (3) However, subsection (1) does not apply if the person has notified the Commonwealth under section 48 of the Act of an event that has the effect that the person will no longer be eligible for fuel security services payments for the rest of their commitment period.

Note: Additional reporting of the volume of FSSP fuel refined in each quarter is required under the POFR Act and POFR rules.

17 Reporting refinery operation—closure circumstances

- (1) For paragraph 47(2)(a) of the Act, a person must provide a report with the following information if they consider that a circumstance has occurred where the obligation to repay under subsection 50(1) of the Act would not arise if the refinery closed or has already closed:
 - (a) the nature of the circumstance and why they consider the obligation to repay would not arise;
 - (b) the steps taken and proposed to be taken by the refinery operator and related refinery entities to prevent or limit the effect of the circumstance, including those outlined in the information provided under paragraph 6(2)(d), and why further steps were not or cannot be taken;
 - (c) the costs associated with addressing any force majeure event or material adverse change, including relevant supporting documentation of those costs;
 - (d) the relevant independent analysis required by paragraph 20(2)(c) or (4)(d);
 - (e) unless otherwise agreed with the Secretary, the data and information used to support the analysis provided under paragraph (d).
- (2) For paragraph 47(2)(c) of the Act, the reports under subsection (1) must be provided as soon as practicable after the circumstance has arisen and the relevant independent analysis has been prepared.

18 Notification

- (1) For paragraph 48(1)(f) of the Act, an event covered by subsection (2) is prescribed.
- (2) A force majeure event or material adverse change has occurred, or is very likely to occur, that has the potential to result in the closure of the refinery.
- (3) For paragraph 48(3)(c) of the Act, the notice must be provided by the later of:
 - (a) 14 days after the event occurs; or

- (b) if under subsection (2) the impact of the force majeure event or material adverse change on the operation of the committed refinery is not clear—14 days after the person forms a conclusion that the event or change has the potential to result in the closure of the refinery.

Part 7—Repayment obligations

19 Waiver of debts and payment by instalments

A decision by the Secretary under paragraph 50(6)(b) or (c) of the Act must take into account, and be consistent with, the *Public Governance, Performance and Accountability Act 2013* and relevant rules and guidelines under that Act.

20 Circumstances when repayment obligation does not apply

- (1) For subsection 51(1) of the Act, this section prescribes circumstances in which the obligation to repay under subsection 50(1) of the Act does not apply.

Note: A person may also apply under subsection 41(2) of the Act to terminate their commitment period which would avoid the application of repayment obligations. If the circumstances in this section are met, the Minister can approve that termination under paragraph 10(4)(a). Decisions on applications to vary or terminate a commitment period are reviewable decisions under Division 2 of Part 5 of the Act.

Force majeure

- (2) Repayment under subsection 50(1) does not apply if the Minister is satisfied that:
 - (a) the refinery is operationally unviable or commercially unviable as the result of a force majeure event that the refinery operator:
 - (i) could not have reasonably prevented; or
 - (ii) cannot reasonably limit the effect of;notwithstanding the refinery operator having taken appropriate steps which a prudent, experienced and reasonable person in the circumstances of the refinery operator would have taken; and
 - (b) related refinery entities have not unreasonably stopped, or impeded the ability for, the refinery operator taking appropriate steps under paragraph (a); and
 - (c) relevant independent analysis is provided by the person subject to the repayment to the Minister to evidence paragraph (2)(a).
- (3) For paragraph (2)(a), a *force majeure event* is one of the following events:
 - (a) fire, flood, earthquake, weather events or acts of God;
 - (b) war or other state of armed hostilities, act of terrorism, act of sabotage, national emergency, embargo, closure of federal, state or other administrative borders, or actions by customs;
 - (c) extended unavailability of essential services such as electricity, gas or water;
 - (d) curtailment or failure of the supplies of feedstocks, blendstocks or raw materials from any of the refiner's, or any of its suppliers', sources of supply;
 - (e) equipment or mechanical breakdown, such as those leading to an unplanned shutdown;
 - (f) a restraint, restriction, direction or request by any government agency, body or department, court, tribunal, administrative authority or stock exchange;
 - (g) a strike, lockout, boycott, work ban or other industrial action (whether or not the refiner is party to it or would be able to influence or procure its settlement);
 - (h) an epidemic, pandemic or similar public health concern;

- (i) any other event or circumstance impacting the operation of the refinery that is beyond the reasonable control of the refinery operator and related refinery entities.

Material adverse change

- (4) Repayment under subsection 50(1) of the Act does not apply if the Minister is satisfied that:
 - (a) a material adverse change has occurred; and
 - (b) if the material adverse change is covered by paragraph (5)(a), (b) or (d)—the refinery operator has taken appropriate steps, before and after the change, which a prudent, experienced and reasonable person in the circumstances of the refinery operator would have taken to mitigate or otherwise address the consequences of the situation; and
 - (c) related refinery entities have not unreasonably stopped, or impeded the ability for, the refinery operator taking appropriate steps under paragraph (b); and
 - (d) relevant independent analysis is provided by the person subject to the repayment to the Minister to evidence:
 - (i) paragraph (4)(a); and
 - (ii) if paragraphs (4)(b) or (5)(a), (b), (c) or (f) apply—those paragraphs.
- (5) For paragraph (4)(a), a **material adverse change** is one of the following circumstances:
 - (a) the refinery has operated continuously below a quarterly margin of 4.6 cents per litre (not taking into account fuel security services payments) for at least 9 months before a decision to close the refinery;
 - (b) the refinery operations have recorded losses of at least \$60 million in a continuous period of 9 months or less prior to a decision to close the refinery;
 - Note: The occurrence of losses would take into account fuel security services payments and other support for the refinery, such as financial support provided by the Commonwealth government.
 - (c) a regulatory change event;
 - (d) the refinery and its employees have failed to make an enterprise agreement within the meaning of the *Fair Work Act 2009* in circumstances where:
 - (i) the refinery (including its bargaining representatives) have met the good faith bargaining requirements in the *Fair Work Act 2009*; and
 - (ii) all dispute resolution processes under the *Fair Work Act 2009* have been exhausted in an attempt to make the enterprise agreement; and
 - (iii) the decision to close the refinery is directly related to the failure to make an enterprise agreement;
 - (e) an amendment to the Act or this instrument that has the effect that fuel security services payments are no longer available to the refinery for the remainder of its commitment period;
 - (f) the Act or this instrument was amended to materially reduce the payments under Part 3 of the Act in respect of the refinery over the remainder of its commitment period in the 180 days before a decision to close the refinery.

Regulatory change event

- (6) For paragraph (5)(c), a **regulatory change event** occurs if:
 - (a) there is a change to Commonwealth, State, Territory or local government regulatory settings (including relevant laws, subordinate legislation or regulatory approvals) that materially increases costs for the refinery; and
 - (b) the change is not a change to fuel quality standards that the refinery has been funded, or offered funding, by the Commonwealth to implement; and

- (c) the impact of the change makes the refinery commercially unviable.

Commercially unviable

- (7) For subsection (2) and paragraph (6)(c), a refinery is **commercially unviable** if the continued operation of the refinery is reasonably likely to result in:
 - (a) the refinery operating continuously below a quarterly margin of 4.6 cents per litre (not taking into account fuel security services payments) for at least the next 9 months; or
 - (b) the refinery operations recording losses of at least \$60 million within the next 9 months; or

Note: The expectation of losses would take into account fuel security services payments and other support for the refinery, such as financial support provided by the Commonwealth.

 - (c) the refinery operations not achieving a commercial return on investment (such that the net present value (NPV) of the asset would be less than zero over the refinery's commitment period); or
 - (d) material ongoing losses that the Minister considers sufficient to make the refinery unviable from a commercial perspective.
- (8) For subsections (5) and (7), **losses** means EBITDA minus normalised capital expenditure, where **normalised capital expenditure** means the average capital expenditure across a 5 year period (which ends at the end of the 9 month or less period under paragraph (5)(b) or the 9 month period under paragraph (7)(b), as applicable), and is pro rata adjusted to the relevant period of assessment.

Operationally unviable

- (9) For paragraph (2)(a), a refinery is **operationally unviable** if it is not reasonably practicable for operational reasons to operate the refinery, or bring the refinery back into operation, on an ongoing basis in substantially the same manner as prior to the force majeure event.

Relevant independent analysis

- (10) For paragraph (2)(c) and (4)(d), **relevant independent analysis** must include independent engineering, operational, market and financial analysis that is:
 - (a) prepared by appropriately qualified experts with access to:
 - (i) all relevant records of the refinery operator; and
 - (ii) EBIT and EBITDA for the refinery; and
 - (b) relevant and proportionate to the matters which need to be evidenced.

21 Partial repayment circumstances

- (1) For subsection 51(2) of the Act, this section prescribes circumstances when an amount less than the total amount under paragraph 50(2)(a) of the Act is repayable and how to calculate that lesser repayable amount.
- (2) A lesser amount calculated under subsection (3) is repayable, in the circumstances where the start of the 120 day period under subsection 50(1) of the Act occurs after 1 January 2022 and before 30 June 2030.
- (3) The repayable amount (**RA**) for paragraph 50(2)(b) of the Act is given by the following formula:

$$RA = \frac{RC}{CP} \times TP$$

where:

RC is the days remaining in the commitment period for the committed refinery after the start of the 120 day period under subsection 50(1) of the Act.

CP is the total number of days in the commitment period for the committed refinery starting from the first day of the first quarter the person subject to subsection 50(1) of the Act was eligible for fuel security services payments for the refinery.

TP is the total amount of fuel security services payments paid to the person subject to subsection 50(1) of the Act in respect of the committed refinery.

22 Extension of period of cessation

- (1) For section 52 of the Act, this section prescribes circumstances when the Secretary may extend the 120 day period mentioned in paragraph 50(1)(b) of the Act.
- (2) The Secretary may extend the period if satisfied that:
 - (a) the refinery operator is taking, and will continue to take, reasonable steps to continue refining FSSP fuel at the refinery as soon as reasonably practicable; and
 - (b) the refinery is expected to restart refining FSSP fuel:
 - (i) within 60 days after the end of the period mentioned in paragraph 50(1)(b) of the Act; or
 - (ii) if essential maintenance or capital works need longer than the period in subparagraph (i)—as soon as reasonably practicable after that maintenance or capital works are completed.
- (3) Without limiting subsection (2), if the refinery is conducting a scheduled maintenance turnaround notified to the Secretary in advance of its commencement, the Secretary may extend the period if satisfied that:
 - (a) the extension is appropriate to allow for the completion of the maintenance; and
 - (b) the refinery operator is expected to resume refining FSSP fuel at the refinery as soon as practicable after the completion of the maintenance.